

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.7853 OF 2003

Date: 28-12-2007

Between :

Shaik Ramu

□ □ □

Petitioner

And

1. Govt. of A.P., rep. by its Revenue Divisional Officer, Narsipatnam, Visakhapatnam., and 2 others. .. Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.7853 OF 2003

ORDER :

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The petitioner herein is the authorized dealer of the fair price shop of Peddaboddepalli Village, Narsipatnam Mandal, Visakhapatnam District. His authorization was cancelled by the 1st respondent – Revenue Divisional Officer, Narsipatnam by order dated 20-7-2002 on the ground of misutilisation of the rice meant for distribution under Food For Work Scheme (for short, FFWS). The appeal preferred by the petitioner against the order of cancellation was dismissed by the Joint Collector, Visakhapatnam by order dated 5-10-2002 and the same was confirmed on Revision by the 3rd respondent – District Collector by order dated 29-3-2003. Hence, this writ petition seeking a declaration that the action of the respondents in cancelling the authorization of the petitioner is arbitrary and illegal.

I have heard the learned Counsel for the petitioner as well as the learned Government Pleader and perused the material on record.

It is primarily contended by the learned Counsel for the petitioner that since the distribution of rice under FFWS is not governed by the provisions of the Essential Commodities Act, 1955 (for short, 'the Act') much less Control Orders made thereunder, the impugned action of the respondents is arbitrary, illegal and without jurisdiction. While placing reliance upon the decisions in KAILASH PRASAD YADAV v. STATE OF JHARKHAND^[1] and SRI SAI TRADERS, VIJAYAWADA v. ASSISTANT SUPPLY OFFICER, CIRCLE-I, VIJAYAWADA^[2], the learned Counsel for the petitioner further contended that by virtue of the order of the Government of India dated 15-2-2002 followed by the order of the Government of A.P. in G.O.Ms.No.79, dated 29-6-2005 rescinding the Andhra Pradesh Paddy and Rice (Requisitioning of Stocks) Order, 1966, there is absolutely no restriction on the movement of rice in the State of Andhra Pradesh and

consequently the impugned cancellation of authorization for the alleged diversion of rice meant for FFWS is arbitrary and illegal.

On the other hand, the learned Government Pleader while distinguishing the decisions cited by the learned Counsel for the petitioner on facts, contended that the concurrent findings recorded by the respondents do not warrant any interference.

A perusal of the order of cancellation dated 20-7-2002 passed by the 1st respondent shows that on receipt of credible information that FFWS rice was being diverted, the Mandal Revenue Officer, Narsipatnam surprised the fair price shop of the petitioner and found shortage of 274.75 quintals of FFWS rice when compared to the coupons produced by the petitioner. It was also found that the petitioner sold 129 bags of rice each weighing 50 kgs to one Babu Rao which was being diverted in the van bearing No.AP-16-Y-386. The petitioner was also found to be maintaining unauthorized godowns in contravention of the conditions of authorization.

The petitioner was issued a notice calling upon to explain the said allegations and after considering his explanation, having found that all the allegations were established the authorization was cancelled and the same was confirmed on Appeal and Revision.

Section 3 of the Essential Commodities Act, 1955 empowers the Central Government to issue orders providing for regulating or prohibiting production, supply and distribution of the essential commodities. The definition of Essential Commodity under Section 2(a) of the Act includes food stuffs. In exercise of the power conferred under Section 3 of the E.C. Act., the Andhra Pradesh Scheduled Commodities (RDSCS) Order, 1973 (for short, '1973 Control Order') was made for the purpose of controlling and ensuring proper distribution of scheduled commodities owned by the State through fair price shops. The word 'scheduled commodity' has been defined under Section 2(g) of the 1973 Control Order as any commodity specified in the Schedule to the order which is supplied by the State Government or by an agency appointed by the State Government to any authorized fair price shop or establishment for issue to the consumers. The schedule to the Control Order, 1973 included rice among other commodities specified thereunder. The 1973 Control Order was

subsequently superseded by the A.P. State Public Distribution System Control Order, 2001 (for short, '2001 Order') which also contained an identical definition of the scheduled commodity and the Schedule to the 2001 Control Order also included rice.

Clause 3(4) of the 1973 Control Order empowered the appointing authority to suspend or cancel the authorization after making such enquiry as may be deemed necessary and for reasons to be recorded in writing. Clause (16) provided for conditions to be observed by the authorized dealer of the fair price shop, one of the conditions being that the authorization shall be liable for suspension or cancellation for any contravention of the provisions of the Control Order. The form of authorization prescribed in Form-2 further made it clear that the authorized dealer is bound to comply with any directions that may be given to him by the appointing authority with regard to purchase, sale or storage for sale of scheduled commodities.

On a combined reading of the above provisions, it is clear that the rice being a scheduled commodity as defined under the Control Order 1973 as well as 2001 Control Order is one of the items meant for distribution to the consumers and the authorized dealers are bound to distribute the same either under PDS or FFWS in compliance with the instructions of the appointing authority. Hence, in the event of the authorized dealer indulging in misappropriation of such commodity, the authorization is liable for suspension or cancellation. Precisely, the same was done by the 1st respondent after recording a finding that the petitioner had indulged in diversion of rice meant for FFWS. Admittedly, the said order was passed after giving an opportunity of hearing to the petitioner and after conducting an enquiry following due process of law.

The decision of the Supreme Court in KAILASH PRASAD YADAV'S case (1 supra) which was rendered while dealing with confiscation proceedings under Section 6-A of the E.C. Act has no application at all to the facts of the present case. Similarly, in SRI SAI TRADERS, VIJAYAWADA (2 supra) the question whether the authorisation of the fair price shop dealer is liable for cancellation for misappropriation of FFWS rice did not fall for consideration. Hence, both the decisions cited by the learned Counsel for the petitioner are not applicable to the present case.

It is true that so far as the rice meant for distribution under FFWS concerned, the Commissioner of Civil Supplies by order dated 12-8-2001 clarified that confiscation proceedings under Section 6-A of E.C. Act are not maintainable and it is permissible only to take action under the Code of Criminal Procedure. However, in the said proceedings dated 12-8-2002 itself it was made clear that insofar as fair price shop dealers are concerned they are governed by the conditions of the authorization issued under the Andhra Pradesh State Public Distribution System Control Order, 2001. Even clause (6) of the Order issued by the Central Government, dated 15-2-2002 rescinding the Andhra Pradesh Paddy and Rice (Requisitioning of Stocks) Order, 1967 provided that nothing contained in the said order shall affect the operation of the Public Distribution System (Control) Order, 2001. In the clarification, dated 12.8.2002 issued by the Commissioner of Civil Supplies with regard to rice meant for Food for Work, it was further made clear as under :

“With reference to letter cited, it is clarified that Rice Millers who indulge in purchase of rice like Food for Work rice, action has to be taken under Criminal Procedure Code as there is no licensing system.

Insofar as the Fair Price Shop dealers are concerned, they are governed by the conditions of the authorisation issued under the Andhra Pradesh State PDS Control Order, 2001.”

Admittedly, the petitioner is a fair price shop dealer and therefore impugned action of cancellation of authorization does not suffer from any infirmity.

For the aforesaid reasons, I do not find any justifiable reason to hold that the impugned order of cancellation of authorization is arbitrary or illegal. All the contentions raised by the petitioner are untenable and the interference by this Court is unwarranted. Accordingly the Writ Petition is dismissed. No costs.

G. ROHINI, J.

Dt. 28-12-2007

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Note:- CC in one week.

[\[1\]](#) (2007)5 SCC 769

[\[2\]](#) 2006 (4) ALD 736